

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
DELMARVA POWER & LIGHT COMPANY) PSC DOCKET NO. 17-0977
FOR AN INCREASE IN ELECTRIC BASE)
RATES)
(FILED AUGUST 17, 2017))

ORDER NO. 9140

AND NOW, this 9th day of November, 2017, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, on October 24, 2017, Commission Staff and the Delaware Division of the Public Advocate (the "DPA") filed a Joint Motion to Dismiss Delmarva Power & Light Company's ("Delmarva") application for an increase in its electric rates filed August 17, 2017; and

WHEREAS, the Commission-appointed Hearing Examiner in this matter, Mr. Mark Lawrence, as requested in the Joint Motion to Dismiss, deferred decision on the motion and suggested that it be considered by the Commission on November 9, 2017; and

WHEREAS, on October 27, 2017, Staff and the DPA filed a Joint Motion to Stay the approved procedural schedule pending a decision on their Joint Motion to Dismiss Delmarva's application; and

WHEREAS, on October 30, 2017, the Hearing Examiner deferred a decision on the Joint Motion to Stay and suggested that the motion be jointly heard, along with the Joint Motion to Dismiss on November 9, 2017; and

WHEREAS, under the approved procedural schedule, Staff and interveners' discovery was to be served on Delmarva by November 1, 2017; and

WHEREAS, on October 30, Staff and the DPA filed a Petition for an Interlocutory Appeal of the Hearing Examiner's October 30 decision not to grant the joint request to stay the proceedings pending consideration of the Joint Motion to Dismiss; and

WHEREAS, on October 31, 2017, the Commission heard argument from Staff, the DPA, and Delmarva on the Petition for Interlocutory Appeal; and

WHEREAS, during the October 31 argument, Delmarva Power informed the Commission that it agreed that the procedural schedule should be stayed pending the Commission's decision on the Motion to Dismiss:

**NOW, THEREFORE, IT IS ORDERED BY THE AFFIRMATIVE VOTE OF
NOT FEWER THAN THREE COMMISSIONERS:**

1. The Commission determines that Staff and the DPA have satisfied the requirements for an interlocutory appeal.¹

2. The Commission finds extraordinary circumstances exist here that necessitate the Commission's prompt decision. Although Delmarva Power agrees that the procedural schedule should be stayed pending the Commission's decision on the Motion to Dismiss, the fact that the Hearing Examiner deferred a decision on the Motion to Stay until November 9 means that pursuant to the existing procedural schedule, Staff and interveners' discovery is still due to be served on Delmarva by November 1, 2017. The existing November 1 discovery deadline puts Staff and the DPA at a disadvantage with regard to what discovery, if

¹ Under 26 Del. Admin. C. § 1001-2.16.1, a party may take an interlocutory appeal from a ruling of a Hearing Examiner to the full Commission during the course of a proceeding "where extraordinary circumstances necessitate a prompt decision by the Commission to prevent substantial injustice or detriment to the public interest."

any, each party should file on November 1 and may prejudice their respective rights going forward in this matter.

3. Accordingly, we grant the stay of this proceeding pending consideration of the Motion to Dismiss as well as any other relief that may be required in this proceeding, including necessary further adjustments to the approved procedural schedule.

4. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Chair

Commissioner

Commissioner

Commissioner

Commissioner

ATTEST:

Secretary